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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 ELECTRONIC FRONTIER FOUNDATION,)
16)

17 Plaintiff,)

18 vs.)

19 DEPARTMENT OF DEFENSE, ET AL.,)
20)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No. 3:09-CV-05640-SI

**STIPULATION AND [PROPOSED]
ORDER TO AMEND BRIEFING
SCHEDULE**

1 Pursuant to Federal Rule of Civil Procedure 6(b)(1) and Civil L.R. 6-2, Plaintiff Electronic
2 Frontier Foundation (“EFF”) and Defendants Department of Justice, Criminal Division; U.S. Secret
3 Service; Federal Bureau Investigation; and Department of Homeland Security (collectively
4 “Defendants”) hereby stipulate to and respectfully request that this Court extend the briefing
5 schedule for the filing of the parties’ dispositive motions. Defendants requested the revisions to
6 the briefing schedule due to the unavailability of counsel for one of the Defendants, as counsel’s
7 father died on September 18, 2011.

8 1. Defendants submit that the Declaration of Kimberly L. Herb establishes good cause for
9 the requested enlargement as follows:

- 10 a. On January 24, 2011, the Court granted EFF’s motion to consolidate the present
11 action with *EFF v. DHS*, No. 10-cv-05526 (N.D. Cal.). (Dkt. 41.) As part of that
12 Order, the Court also directed the parties to meet and confer and submit a joint
13 proposal for the filing of dispositive motions in the consolidated action. (*Id.*)
14 b. On February 25, 2011, the parties presented the Court with a proposed briefing
15 schedule for the filing of dispositive motions. (Dkt. 46 at 1.) The Court approved
16 the briefing schedule on March 1, 2011. That briefing schedule requires the parties
17 to file their dispositive motions as follows: Defendants file a motion for summary
18 judgment, including supporting documentation, on September 23, 2011; EFF files
19 its response to Defendants’ motion for summary judgment and cross-moves for
20 summary judgment on October 21, 2011; Defendants file their reply to their motion
21 for summary judgment and their response to EFF’s cross-motion on November 4,
22 2011; EFF files its reply to its cross-motion for summary judgment on November
23 18, 2011; the Court holds a hearing on the dispositive motions on December 9,
24 2011. (Dkt. 48 at 2-3.)
25 c. On September 18, 2011, counsel for one of the Defendants (“agency counsel”) lost
26 her father. Agency counsel is currently out of state due to the death of her father
27 and is not scheduled to return for at least ten days. As a result, agency counsel will
28

1 be unable to review Defendants' motion for summary judgment and finalize the
2 declaration necessary to support that motion. Accordingly, Defendants requested
3 that Plaintiffs agree to an extension of the briefing schedule.

- 4 d. On September 20, 2011, defense counsel conferred with EFF regarding the briefing
5 schedule for the parties' dispositive motions. The parties agreed to revise the
6 briefing schedule as follows: Defendants file their motion for summary judgment
7 on October 21, 2011; EFF files its opposition and cross-motion on November 18,
8 2011; Defendants file their reply and opposition to EFF's cross-motion on
9 December 2, 2011; EFF files its reply to its cross-motion on December 16, 2011;
10 the Court holds a hearing on the parties' dispositive motions on January 13, 2012.
- 11 2. While the requested enlargement will affect the present briefing schedule for this case,
12 the parties believe a one-month extension of Defendants' filing deadline is warranted
13 given the circumstances. Furthermore, the parties believe this case will be resolved on
14 summary judgment, and thus this case can be resolved expeditiously after the filing of
15 the parties' motions.

16 * * *

17
18 The parties respectfully request that the Court extend the briefing schedule for the filing of
19 the parties' dispositive motions such that they may be filed as discussed in paragraph 1(d) above.

1 DATED: September 22, 2011

2 Respectfully submitted,

3 /s/ Jennifer Lynch

4 ELECTRONIC FRONTIER FOUNDATION

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Attorneys for Defendants

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16 **GENERAL ORDER NO. 45(X) CERTIFICATION**

17 I attest that I have obtained Jennifer Lynch's concurrence in the filing of this document.

18 /s/ Kimberly L. Herb

19 Kimberly L. Herb

20 * * *

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22
23 Dated: 9/26/11



24 Hon. Susan Ilston

United States District Judge